

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of Petitions

of

TEXACO INC.

for redetermination of deficiencies
of franchise tax under Article 9-A
of the tax law for calendar years
1965, 1966 and 1967.

Texaco Inc. having filed petitions for redetermination of deficiencies of franchise tax under Article 9-A of the tax law for calendar years 1965, 1966 and 1967 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York City, on June 9, 1971, before John J. Genevich, Hearing Officer of the Department of Taxation and Finance, at which hearing, Alfred E. Keane, Manager of the New York division of the taxpayer's tax department, appeared personally and testified, and the record having been duly examined and considered by the State Tax Commission,

It is hereby found:

(1) Texaco Inc. was incorporated under the laws of the State of Delaware on August 26, 1926 and began doing business in New York on November 1, 1941.

(2) The taxpayer and its many subsidiaries and affiliates engage in the production and distribution of petroleum, natural gas and petrochemicals throughout the world. Texaco Inc. makes substantial investments in and advances to subsidiaries.

(3) The taxpayer requires substantial funds for its business activities and in order to make investments in and advances to subsidiaries.

(4) Based on a field examination, notices of deficiency were issued on August 14, 1970, as follows:

1965

Entire net income per report		\$184,368,506
Add: Interest expense attributable to subsidiary capital		3,943,384
Less: 50% of foreign tax attributable to dividends		26,238,016
Less: Foreign tax attributable to interest income		9,013
Adjusted entire net income		162,064,861
Adjusted investment income		98,963,013
Adjusted business income		63,101,848
Investment allocation per report	0.073962%	
Business allocation per report	8.584140%	
Allocated investment income		73,195
Allocated business income		5,416,751
Total		5,489,946
Tax at 5½%		301,947
Tax computed on income		284,397
Deficiency		17,550
Interest from 3/15/66 to 8/14/70		4,387
Total		\$ 21,937

Adjusted investment income was computed as follows:

Investment income per report	\$125,210,042
Less: 50% of foreign tax attributable to dividends	26,238,016
Less: Foreign tax attributable to interest income	9,013
Adjusted investment income	\$ 98,963,013

Interest expense attributable to subsidiary capital was computed as follows:

Average investments in subsidiaries	\$1,068,272,241
Average total assets	4,339,417,409
Percentage of total assets	24,61787%
Total interest expense	16,018,381
Interest expense attributable to subsidiary capital	\$ 3,943,384

1966

Entire net income per report	\$217,114,967
Add: Interest expense attributable to subsidiary capital	4,106,558
Less: 50% of foreign tax attributable to dividends	11,326,858
Less: Foreign tax attributable to interest income	7,402
Adjusted entire net income	209,887,265
Adjusted investment income	119,870,457
Adjusted business income	90,016,808

Investment allocation percentage	0.077609%	
Business allocation percentage	8.446693%	
Allocated investment income		93,030
Allocated business income		7,603,443
Total		7,696,473
Tax at 5½%		423,306
Tax computed on income		404,712
Deficiency		18,594
Interest from 3/15/67 to 8/14/1970		3,533
Total		\$ 22,127

Adjusted investment income was computed as follows:

Investment income per report	\$131,204,717
Less: 50% of foreign tax attributable to dividends	11,326,858
Less: Foreign tax attributable to interest income	7,402
Adjusted investment income	\$119,870,457

Interest expense attributable to subsidiary capital was computed as follows:

Average investment in subsidiaries	\$1,206,288,006
Average total assets	4,764,395,814
Percentage of total assets	25.3188%
Total interest expense	16,219,403
Interest expense attributable to subsidiary capital	\$ 4,106,558

1967

Entire net income per report	\$219,813,717
Add: Interest expense attributable to subsidiary capital	6,687,754
Less: 50% of foreign tax attributable to dividends	6,150,293
Less: Foreign tax attributable to interest income	6,718
Adjusted entire net income	220,344,460
Adjusted investment income	96,734,014
Adjusted business income	123,610,446
Investment allocation percentage	0.111816%
Business allocation percentage	8.268098%
Allocated investment income	108,164
Allocated business income	10,220,233
Total	10,328,397
Tax at 5½%	568,062
Tax computed on income	538,028
Deficiency	30,034
Interest from 3/15/68 to 8/14/70	3,904
Total	\$ 33,938

Adjusted investment income was computed as follows:

Investment income per report	\$102,891,025
Less: 50% of foreign tax attributable to dividends	6,150,293
Less: Foreign tax attributable to interest income	6,718
Adjusted investment income	\$ 96,734,014

Interest expense attributable to subsidiary capital was computed as follows:

Average investment in subsidiaries		\$1,581,383,818
Average total assets		5,537,507,422
Percentage of total assets	28.55768%	
Total interest expense		23,418,410
Interest expense attributable to subsidiary capital		\$ 6,687,754

(5) Timely petitions for redetermination of deficiency were filed protesting the added tax and imposition of interest on disallowances made pursuant to Sections 208.9(b)(6) and 208.6 of the tax law.

(6) Section 208.9(b)(6) of the tax law states,

"(b) Entire net income shall be determined without the exclusion, deduction or credit of:

"(6) in the discretion of the tax commission, any amount of interest directly or indirectly and any other amount directly attributable as a carrying charge or otherwise to subsidiary capital or to income, gains or losses from subsidiary capital;"

(7) Section 208.6 of the tax law states, in part,

"The term 'investment income' means income, including capital gains in excess of capital losses, from investment capital, to the extent included in computing entire net income, less (a) in the discretion of the tax commission, any deductions allowable in computing entire net income which are attributable to investment capital or investment income, and (b) * * *,"

(8) Section 213 of the tax law requires the payment of the tax in full on the due date of the report without regard to any extension of time for filing such report.

(9) Section 1084(a) states,

"General.—If any amount of tax is not paid on or before the last date prescribed in article nine, nine-a, nine-b or nine-c for payment, interest on such amount at the rate of six percent per annum shall be paid for the period from such last date to the date paid, whether or not any extension of time for payment was granted. * * *."

(10) Section 1084 (b) through (n) of the tax law provides exceptions to the general provisions of Section 1084(a) but there is no exception included therein pertaining to an assessment made pursuant to authority granted by Section 208.9(b)(6) or Section 208.6 of the tax law.

The State Tax Commission hereby

DECIDES:

(A) It has been the consistent policy of the Commission to disallow interest expense attributable to subsidiary capital in accordance with Section 208.9(b)(6) of the tax law.

(B) Since a portion of the taxpayer's borrowings is used to make investments in and advances to subsidiaries, a portion of taxpayer's interest expense is attributable to subsidiary capital.

(C) Interest expense disallowed in (4) above is properly attributable to subsidiary capital.

(D) Since 50% of non-subsidiary dividends are includable in entire net income, only 50% of foreign taxes paid on such dividends are deductible in computing entire net income.

(E) It has been the consistent policy of the Commission to require the deduction of foreign taxes, on items included in investment income, from investment income, in accordance with the provisions of Section 208.6 of the tax law.

(F) Section 1084 of the tax law provides no exception for the imposition of interest on adjustments made in accordance with Section 208.9(b)(6) and Section 208.6 of the tax law.

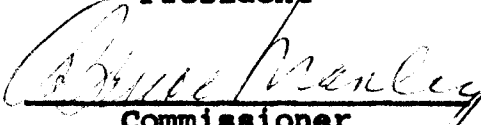
(G) The deficiencies, computed in (4) above, are affirmed as correct, together with additional interest from August 14, 1970, in accordance with Section 1084 of the tax law.

Dated: Albany, New York

this 22nd day of December 1971.

STATE TAX COMMISSION


President


Commissioner


Commissioner